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APPLICATION NO. 09/822,651	FILING DATE 09/30/01	FIRST NAMED INVENTOR SEIDEL	ATTORNEY DOCKET NO. D 54407USA6B.0
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EXAMINER TSOY, E	
ART UNIT 1772	PAPER NUMBER 3

DATE MAILED: 09/11/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

**Office Action Summary**

Application No.

09/822,651

Applicant(s)

SEIDEL ET AL.

Examiner

Elena Tsoy

Art Unit

1772

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. **Claims 1-3** are rejected under 35 U.S.C. 102(b) as being anticipated by Miller et al (US 5,679,302).

Miller discloses a web of material having at least two major sides, the web comprising:

a plurality of discrete regions (See Fig. 8; column 4, lines 57-64); and

a plurality of stems 48 extending from said discrete regions (See Fig. 6B; column 6, lines 48-50); wherein:

- i) the web is made of a nonwoven material; and
- ii) the plurality of stems 48 are fused to at least the first major side of the web by being melt entangled with the web. See Fig. 6A; column 3, lines 3-8; column 6, lines 38-52.

Regarding claim 3, the plurality of stems 48 are comprised of a thermoplastic material selected from the group consisting of: polyolefins, polyester, polyvinyl chloride. See column 5, lines 27-38.

4. **Claims 1-3, 5-9** are rejected under 35 U.S.C. 102(b) as being anticipated by or, in the alternative, under 35 U.S.C. 103(a) as being obvious over Thomas et al (US 5,326,415).

Thomas discloses a web 24 of material having at least two major sides, the web 24 comprising:

a plurality of prongs 22 (stems) extending from first major side of the web, wherein:

i) the web 24 is made of a material selected from knitted fabric, woven, nonwoven material, rubber films (See column 5, lines 63-67), and

ii) the plurality of stems 22 are fused to the first major side of the web by being melt entangled with the web (See Fig. 4; column 16, lines 52-68);

Regarding claim 3, the plurality of stems 22 are comprised of a hot melt adhesive thermoplastics examples of which may be found in "Handbook of adhesives" of 1977. Polyester material is particularly preferred. See column 14, lines 50-68.

Regarding claim 5, since the web 24 is made of a material selected from knitted fabric, woven (See column 5, lines 63-67), one of ordinary skill in the art would easily recognize that portions of the web 24 are capable of engaging the plurality of the stems 22.

Regarding claim 6, since the web 24 is made of a material selected from knitted fabric, woven (See column 5, lines 63-67), one of ordinary skill in the art would easily recognize that the knitted fabric, or woven material is flexible and elastic capable of ready change or easy expansion.

Regarding claim 8, the plurality of the stems 22 are oriented at a plurality of angles. See Fig. 5; column 22, lines 39-50.

Regarding claim 9, the plurality of the stems 22 are tilted in the same direction. See Fig. 1; column 12, lines 17-23.

Although Thomas does not expressly show that an array of stems 22 may be located in a plurality of discrete regions, one of ordinary skill in the art would easily recognize that a plurality of stems of Thomas extend from said discrete regions since Thomas teaches that the array of the stems 22 may be of *any* pattern (See column 12, line 49), and apertures 56 for making stems 22 are located in discrete regions as clearly shown in Fig. 4 (See Fig. 4; column 16, lines 52-68; column 17, lines 59-64).

5. **Claims 4, 10** are rejected under 35 U.S.C. 103(a) as being unpatentable over Thomas et al (US 5,326,415).

Thomas, as been discussed in paragraph 4, fails to teach that:

the discrete regions cover between 5 and 25 % of the first major side of the web (Claim 4);

the discrete regions are separated an average of approximately 0.05 and 30 cm from one another (Claim 10).

However, it would have been an obvious matter of design choice to make discrete regions of any desirable size and pattern including claimed coverage of the web of 5-25% or claimed separation of the discrete regions an average of approximately 0.05 and 30 cm from one another depending on the particular application of end product, since such a modification would have involved a mere change in the size. A change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955).

### ***Response to Arguments***

6. Applicant's arguments with respect to claims 1-10 have been considered but are moot in view of the new ground(s) of rejection.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elena Tsoy whose telephone number is (703) 605-1171. The examiner can normally be reached on 9:30-6:00.

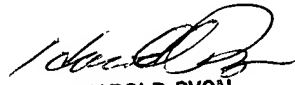
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on (703) 308-4251. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-3599 for regular communications and (703) 872-9310 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

ET

Elena Tsoy  
Examiner  
Art Unit 1772

September 7, 2001

  
HAROLD PYON  
SUPERVISORY PATENT EXAMINER  
1772

9/8/01